

Mar 19, 2018

SEAN F. McAVOY, CLERK

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

SARAH LYNN HILL,

Plaintiff,

vs.

COMMISSIONER OF SOCIAL

SECURITY,

Defendant.

No. 2:17-cv-00071-MKD

**ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

ECF Nos. 17, 18

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 17, 18. The parties consented to proceed before a magistrate judge. ECF No. 7. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, the Court denies Plaintiff's Motion (ECF No. 17) and grants Defendant's Motion (ECF No. 18).

1 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an
2 ALJ’s decision on account of an error that is harmless.” *Id.* An error is harmless
3 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”
4 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ’s
5 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
6 *Sanders*, 556 U.S. 396, 409-10 (2009).

7 **FIVE-STEP EVALUATION PROCESS**

8 A claimant must satisfy two conditions to be considered “disabled” within
9 the meaning of the Social Security Act. First, the claimant must be “unable to
10 engage in any substantial gainful activity by reason of any medically determinable
11 physical or mental impairment which can be expected to result in death or which
12 has lasted or can be expected to last for a continuous period of not less than twelve
13 months.” 42 U.S.C. §§ 423(d)(1)(A); 1382c(a)(3)(A). Second, the claimant’s
14 impairment must be “of such severity that he is not only unable to do his previous
15 work[,] but cannot, considering his age, education, and work experience, engage in
16 any other kind of substantial gainful work which exists in the national economy.”
17 42 U.S.C. §§ 423(d)(2)(A); 1382c(a)(3)(B).

18 The Commissioner has established a five-step sequential analysis to
19 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
20 404.1520(a)(4)(i)-(v); 416.920(a)(4)(i)-(v). At step one, the Commissioner

1 considers the claimant's work activity. 20 C.F.R. §§ 404.1520(a)(4)(i);
2 416.920(a)(4)(i). If the claimant is engaged in "substantial gainful activity," the
3 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
4 404.1520(b); 416.920(b).

5 If the claimant is not engaged in substantial gainful activity, the analysis
6 proceeds to step two. At this step, the Commissioner considers the severity of the
7 claimant's impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the
8 claimant suffers from "any impairment or combination of impairments which
9 significantly limits [his or her] physical or mental ability to do basic work
10 activities," the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c);
11 416.920(c). If the claimant's impairment does not satisfy this severity threshold,
12 however, the Commissioner must find that the claimant is not disabled. 20 C.F.R.
13 §§ 404.1520(c); 416.920(c).

14 At step three, the Commissioner compares the claimant's impairment to
15 severe impairments recognized by the Commissioner to be so severe as to preclude
16 a person from engaging in substantial gainful activity. 20 C.F.R. §§
17 404.1520(a)(4)(iii); 416.920(a)(4)(iii). If the impairment is as severe or more
18 severe than one of the enumerated impairments, the Commissioner must find the
19 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d).

1 If the severity of the claimant's impairment does not meet or exceed the
2 severity of the enumerated impairments, the Commissioner must pause to assess
3 the claimant's "residual functional capacity." Residual functional capacity (RFC),
4 defined generally as the claimant's ability to perform physical and mental work
5 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§
6 404.1545(a)(1); 416.945(a)(1), is relevant to both the fourth and fifth steps of the
7 analysis.

8 At step four, the Commissioner considers whether, in view of the claimant's
9 RFC, the claimant is capable of performing work that he or she has performed in
10 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv); 416.920(a)(4)(iv).
11 If the claimant is capable of performing past relevant work, the Commissioner
12 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f); 416.920(f).
13 If the claimant is incapable of performing such work, the analysis proceeds to step
14 five.

15 At step five, the Commissioner considers whether, in view of the claimant's
16 RFC, the claimant is capable of performing other work in the national economy.
17 20 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). In making this determination,
18 the Commissioner must also consider vocational factors such as the claimant's age,
19 education and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v);
20 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the

Commissioner must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(g)(1); 416.920(g)(1). If the claimant is not capable of adjusting to other work, analysis concludes with a finding that the claimant is disabled and is therefore entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1); 416.920(g)(1).

The claimant bears the burden of proof at steps one through four above. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five, the burden shifts to the Commissioner to establish that (1) the claimant is capable of performing other work; and (2) such work “exists in significant numbers in the national economy.” 20 C.F.R. §§ 404.1560(c)(2); 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

CHILDHOOD DISABILITY INSURANCE BENEFITS

The Social Security Act provides disabled child’s insurance benefits based on the earnings record of an insured person who is entitled to old-age or disability benefits or has died. 42 U.S.C. § 402(d); 20 C.F.R. § 404.350(a). The same definition of “disability” and five-step sequential evaluation outlined above governs eligibility for disabled child’s insurance benefits. *See* 42 U.S.C. § 423(d); 20 C.F.R. § 404.1520(a)(1)-(2). In addition, in order to qualify for disabled child’s insurance benefits several criteria must be met. 20 C.F.R. §§ 404.350(a)(1)-(5). As relevant here, if the claimant is over 18, the claimant must “have a disability that began before [she] became 22 years old.” 20 C.F.R. §§ 404.350(a)(5).

1 **ALJ’S FINDINGS**

2 In July 2013, shortly after she turned age eighteen, Plaintiff applied for Title
3 II child disability insurance benefits, otherwise known as disabled adult child
4 benefits, as the survivor of her father, who died in March 2013. Tr. 212-15. In
5 September 2013, Plaintiff also applied for Title XVI supplemental security income
6 (SSI) benefits. Tr. 216-21. Plaintiff alleged a disability onset date of January 1,
7 2007 (eleven years old) in the SSI application, Tr.258, and June 9, 2013 in the
8 insurance benefits application, Tr. 230. Plaintiff’s applications were denied
9 initially and upon reconsideration. Tr. 112-48. Plaintiff appeared for a
10 consolidated hearing without representation before an administrative law judge
11 (ALJ) on January 13, 2015. Tr. 45-70. *Id.* A supplemental hearing was held on
12 June 23, 2015, where Plaintiff was represented by counsel. Tr. 71-111. On July
13 29, 2015, the ALJ denied Plaintiff’s claims. Tr. 15-34.

14 The ALJ noted that Plaintiff was born on June 9, 1995 and had not attained
15 the age of twenty-two as of January 1, 2007, the alleged onset date. Tr. 20. At
16 step one, the ALJ found Plaintiff has not engaged in substantial gainful activity
17 since June 8, 2013, “the date Plaintiff attained the age of eighteen, and the
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19
20

1 beginning of the relevant period.”¹ Tr. 20. At step two, the ALJ found Plaintiff
2 has the following severe impairments: depression and anxiety. Tr. 21. At step
3 three, the ALJ found that Plaintiff does not have an impairment or combination of
4 impairments that meets or medically equals the severity of a listed impairment. Tr.
5 21. The ALJ then concluded that Plaintiff has the RFC to perform a full range of
6 work at all exertional levels, but with the following nonexertional limitations:

7 the claimant is able to perform simple, routine, repetitive tasks with no
8 detailed work and only ordinary production requirements. The claimant can
9 have brief, superficial contact with the general public and occasional, brief,
non-collaborative contact with co-workers. The claimant would work better
with things than with people.

10 Tr. 23. At step four, the ALJ found Plaintiff has no past relevant work. Tr. 27. At
11 step five, the ALJ found that considering Plaintiff’s age, education, work
12 experience, and RFC, there are other jobs that exist in significant numbers in the
13 national economy that the Plaintiff can perform such as cleaner and kitchen helper.
14 Tr. 28. The ALJ concluded Plaintiff has not been under a disability, as defined in
15 the Social Security Act, since June 8, 2013 through the date of the decision. Tr.
16 28.

17
18 ¹ Under SSA regulations, “[a]n individual attains a given age on the first moment
19 of the day preceding the anniversary of his birth corresponding to such age.” 20
20 C.F.R. §§ 404.2(c)(4), 416.120(c)(4).

1 On December 16, 2016, the Appeals Council denied review, Tr. 1-6, making
2 the ALJ's decision the Commissioner's final decision for purposes of judicial
3 review. *See* 42 U.S.C. § 1383(c)(3); 20 C.F.R. §§ 416.1481, 422.210.

4 ISSUES

5 Plaintiff seeks judicial review of the Commissioner's final decision denying
6 her child disability insurance benefits under Title II and supplemental security
7 income benefits under Title XVI of the Social Security Act. ECF No. 17. Plaintiff
8 raises the following issues for this Court's review:

- 9 1. Whether the ALJ properly considered Plaintiff's application for disabled
10 child's insurance benefits;
- 11 2. Whether the ALJ properly weighed Plaintiff's symptom claims;
- 12 3. Whether the ALJ properly evaluated the lay witness statements;
- 13 4. Whether the ALJ properly weighed the medical opinion evidence;
- 14 5. Whether the ALJ properly determined Plaintiff does not meet a Listing; and
- 15 6. Whether the ALJ properly determined the RFC.

16 *See* ECF No. 17.

17 DISCUSSION

18 **A. Disabled Child's Insurance Benefits and the Record Predating June 8, 19 2013**

20 Plaintiff contends the ALJ failed to properly analyze Plaintiff's claim for
benefits under the disability insurance program because "ALJ failed to consider

1 evidence of Plaintiff's impairments and symptoms prior to her eighteenth
2 birthday." ECF No. 17 at 10. Plaintiff also contends by limiting the time period
3 under review, the ALJ "denied Ms. Hill the opportunity to present the full
4 longitudinal record of her mental impairment." ECF No. 17 at 11.

5 To be eligible for disabled child's insurance benefits, Plaintiff must "at the
6 time [her] application is filed," be "under a disability . . . which began before [s]he
7 attained the age of 22." 42 U.S.C. § 402(d)(1)(B)(ii). This statute has been
8 interpreted to mean that the child's disability must have commenced prior to her
9 attainment of age 22 and continued, without interruption, through the date of her
10 application. *Smolen v. Chater*, 80 F.3d 1273, 1280 (9th Cir. 1986). Plaintiff's date
11 of application was July 10, 2013.

12 The consolidated administrative hearing on both benefits applications
13 evidences the ALJ's, counsel's, and experts' confusion about the relevant time
14 periods at issue. *See* Tr. 51 (ALJ suggesting "this is a continuing disability review
15 and a Title XVI case so the protective filing date here and the applicable date
16 would be July 10th of 2013 for an onset rather than the 2007 date."); Tr. 75-76
17 (ALJ checking and clarifying "[s]o it's not a review. It's just a [sic] Application
18 for Child Disability Benefits that would go back prior to her 22nd birthday....");
19 Tr. 76 (ALJ stating relevant dates are July 10, 2013 back to January 1, 2007); Tr.
20 77 (ALJ stating "for a longitudinal history...those earlier records will be helpful,

1 but I really think the relevant dates we're looking at is when she turned 18 and that
2 would be in 2013."); Tr. 77 (ALJ affirmatively answering the medical expert's
3 question, "[s]o we're just looking at this as an adult?"). After discussion, the ALJ
4 erroneously indicated "the relevant dates [sic] we're looking at is when she turned
5 18." Tr. 77.

6 The ALJ's decision does not set forth a separate time period relevant to the
7 disabled child's insurance benefit claim. Instead, the ALJ found that the
8 "beginning of the relevant period," was "June 8, 2013, the date the claimant
9 attained the age of eighteen." Tr. 20. The ALJ ultimately found: "[t]he claimant
10 has not been under a disability, as defined in the Social Security Act, from June 8,
11 2013, through the date of this decision." Tr. 28. The ALJ's decision notes
12 Plaintiff's February 2013 hospitalization for suicidal ideation was "prior to the
13 claimant's attaining the age of eighteen," Tr. 22, and does not specifically address
14 the assessment of Kevin O. Heid, Ph.D. at the Psychiatric Center for Children and
15 Adolescents while Plaintiff was hospitalized. *See* Tr. 534-59; ECF No. 17 at 17
16 (contending "[t]he ALJ mistakenly gave no consideration to Dr. Heid."). In the
17 portion of the decision titled "Issues," the ALJ stated a more expansive ruling,
18 which was not set forth in the findings section: "[a]fter careful consideration of all
19 the evidence, the undersigned concludes the claimant has not been under disability
20

1 within the meaning of the Social Security Act from *January 1, 2007*, through the
2 date of this decision.” Tr. 18 (emphasis added).

3 There is no requirement either in statute, regulation, or case law, that the
4 period under consideration by the ALJ on the disabled child insurance benefits
5 claim is limited solely to that between 18 and 22. *See Schold v. Astrue*, 2013 WL
6 1090793, n.3 (W.D. Wash. Feb. 11, 2013) (unpublished). The fact the record
7 evidence predated her eighteenth birthday was irrelevant as the only time period
8 limitations in a disabled child insurance benefits claim are that disability must have
9 begun prior to age twenty-two and must have been ongoing at the time of
10 application. Nonetheless the Court concludes the ALJ’s consideration of the
11 evidence reflects harmless error.² First, the time period deemed relevant by the
12 ALJ, June 8, 2013 through July 29, 2015, encompassed the date Plaintiff’s child
13
14

15 ² Defendant contends it was harmless error because “Plaintiff already received
16 benefits for the period until her 18th birthday.” ECF No. 18 at 2. The record
17 suggests Plaintiff received child death benefits until she turned eighteen (June 9,
18 2013) on account of her father’s death in March of the same year. Tr. 76-77; ECF
19 No. 17 at 3. Defendant fails to explain how the payment of a death benefit relates
20 to the separate issue of the determination of disability benefits.

1 benefit application was filed, July 10, 2013. Thus, the ALJ's findings included the
2 critical time periods for both benefits applications.

3 Second, though Plaintiff contends the ALJ denied her the opportunity "to
4 present the full longitudinal record," the record belies this contention. The record
5 before the ALJ included evidence dating back to 2004. During administrative
6 proceedings, Plaintiff's attorney presented evidence from the entire record. Tr.
7 208 (pre-hearing memorandum); Tr. 110-11 (administrative hearing).

8 Finally, Plaintiff also contends the ALJ "limit[ed] review to evidence dating
9 after her 18th birthday." ECF No. 17 at 11. Contrary to this contention, at the
10 administrative hearing, earlier records were discussed and the ALJ orally explained
11 these "earlier records will be helpful." Tr. 77. Although the ALJ's decision
12 reflects a more heavy reliance upon evidence dating after Plaintiff's eighteenth
13 birthday, the decision also refers to portions of the record dating prior to Plaintiff's
14 18th birthday and reflects consideration of this evidence. *See, e.g.*, Tr. 26
15 (discussing range of GAF scores). The ALJ's decision also repeatedly states the
16 ALJ considered "all the evidence" and "the entire record." Tr. 18, 20, 23, 27; *see*
17 *also* Tr. 27 (indicating the RFC "is supported by a complete review of the
18 record.").

19 The ALJ is not required to provide a robust discussion of every piece of
20 evidence proffered, which in this case spans over a ten-year period. *See, e.g.*,

1 *Howard ex rel. Wolff v. Barnhart*, 341 F.3d 1006, 1012 (9th Cir. 2003) (stating that
2 “in interpreting the evidence and developing the record, the ALJ does not need to
3 discuss every piece of evidence” (quotation marks omitted)). The ALJ need only
4 explain why significant or probative evidence has been rejected. *Vincent v.*
5 *Heckler*, 739 F.2d 1393, 1394–95 (9th Cir. 1984). Dr. Heid’s assessment
6 concludes that “it is noteworthy” that Plaintiff’s two hospitalizations (in 2008 and
7 in 2013) followed explosive arguments with her stepmother, Tr. 537, 535, during a
8 time she reported “considerable family discord.” Tr. 536. Both were single crises
9 predating her disability applications. After her February 2013 hospitalization she
10 changed her living circumstances, Tr. 733 (progress note dated June 30, 2014), and
11 suicidal ideations subsided. *See, e.g.*, Tr. 611, 612, 615, 617, 620, 677. Though
12 the ALJ did not discuss Dr. Heid’s assessment in the decision, Plaintiff has not
13 demonstrated how Dr. Heid’s opinion supports greater restrictions than the ALJ
14 found. The assessment does not present any opinion as to Plaintiff’s functional
15 limitations nor does it support a finding of total disability. Accordingly, the Court
16 concludes any error in the ALJ’s consideration of the evidence prior to Plaintiff’s
17 eighteenth birthday did not materially impact the decision and the ALJ’s decision
18 reflects adequate consideration of the record as a whole.

1 **B. Plaintiff's Symptom Claims**

2 Plaintiff contends the ALJ failed to rely upon convincing reasons supported
3 by substantial evidence in discrediting Plaintiff's symptom claims. ECF No. 17 at
4 15.

5 An ALJ engages in a two-step analysis to determine whether a claimant's
6 testimony regarding subjective pain or symptoms is credible. "First, the ALJ must
7 determine whether there is objective medical evidence of an underlying
8 impairment which could reasonably be expected to produce the pain or other
9 symptoms alleged." *Molina*, 674 F.3d at 1112 (internal quotation marks omitted).

10 "The claimant is not required to show that her impairment could reasonably be
11 expected to cause the severity of the symptom she has alleged; she need only show
12 that it could reasonably have caused some degree of the symptom." *Vasquez v.*
13 *Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (internal quotation marks omitted).

14 Second, "[i]f the claimant meets the first test and there is no evidence of
15 malingering, the ALJ can only reject the claimant's testimony about the severity of
16 the symptoms if [the ALJ] gives 'specific, clear and convincing reasons' for the
17 rejection." *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (internal
18 citations and quotations omitted). "General findings are insufficient; rather, the
19 ALJ must identify what testimony is not credible and what evidence undermines
20 the claimant's complaints." *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th

1 Cir. 1995)); *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (“[T]he ALJ
2 must make a credibility determination with findings sufficiently specific to permit
3 the court to conclude that the ALJ did not arbitrarily discredit claimant’s
4 testimony.”). “The clear and convincing [evidence] standard is the most
5 demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995,
6 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920,
7 924 (9th Cir. 2002)).

8 In making an adverse credibility determination, the ALJ may consider, inter
9 alia, (1) the claimant’s reputation for truthfulness; (2) inconsistencies in the
10 claimant’s testimony or between her testimony and her conduct; (3) the claimant’s
11 daily living activities; (4) the claimant’s work record; and (5) testimony from
12 physicians or third parties concerning the nature, severity, and effect of the
13 claimant’s condition. *Thomas*, 278 F.3d at 958-59.

14 The Court finds the ALJ provided several specific, clear, and convincing
15 reasons for the ALJ’s determination that Plaintiff’s symptom complaints were “not
16 entirely credible.” Tr. 24.

17 *1. Source of Symptoms*

18 First, the ALJ noted that the record “shows significant conflict with her
19 mother and an unstable home environment.” Tr. 24. Clinical psychologist Ellen
20 Rozenfeld, Ed.M., Psy.D., testified as a medical expert at the initial hearing and the

1 ALJ accorded her opinion great weight. Tr. 23. Dr. Rozenfeld testified “the
2 claimant has a history of having significantly problematic interactions within the
3 home setting. This [sic] did in fact, carry those limits into a school setting. There
4 are reports of multiple psychosocial stressors . . . and it was noted that she was
5 acting impulsively due to the current psychosocial stressors.” Tr. 53; *see also* Tr.
6 563-87 (February 2013 hospital treatment records describing chief complaint as
7 “didn’t feel safe at home secondary to suicidal ideation” and “extensive family
8 conflicts seem to be a major issue as well”); Tr. 753 (stating Plaintiff relates anger
9 and irritability to stress in living environment, stressors at home, and strained
10 relationship with mother’s partner). Dr. Rozenfeld also opined that at the same
11 time, Plaintiff “seems to be able to relay words appropriately and meaningfully
12 with people outside the home and as well as her friends.” Tr. 54. Plaintiff
13 contends the conflict with Plaintiff’s mother is symptomatic of mental illness, not
14 divergent to it. ECF No. 17 at 13. There is substantial evidence supporting the
15 reasonably drawn inference that Plaintiff’s psychological symptoms were not
16 solely the result of an impairing psychiatric condition, but rather exacerbated by
17 the effects of significant personality conflicts and instability in the home.

18 *2. Inconsistent Medical Evidence*

19 Next, the ALJ concluded there was “nothing in the record that supports a
20 finding that the claimant would be unable to perform simple, routine, repetitive

1 tasks with occasional contact with others.” Tr. 24. While subjective symptom
2 testimony cannot be rejected solely because it is not fully corroborated by
3 objective medical evidence, medical evidence is still a relevant factor in
4 determining severity of symptoms and their disabling effects. *Rollins v.*
5 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). The ALJ specifically cited medical
6 treatment records from June 2013 through June 2015 where Plaintiff was observed
7 to have unremarkable, stable, or mild findings on mental health status
8 examinations. Tr. 24-25. Plaintiff concedes the records show a “calmer period” in
9 the treatment record where “Ms. Hill is doing well.” ECF No. 17 at 14. Yet
10 Plaintiff contends (without citation to any specific record evidence) that the ALJ
11 failed to consider the “intensive therapy sessions, repeated hospitalizations, and
12 doctor’s evaluations” that support her credibility. ECF No. 17 at 15. Regardless of
13 evidence from an earlier period of time that could be interpreted more favorably to
14 Plaintiff, the periods of stability cited by the ALJ, which occurred during the
15 alleged period of disability, establish inconsistencies between plaintiff’s
16 complaints and the objective medical evidence. Such inconsistencies are clear and
17 convincing reasons to discount plaintiff’s credibility. *See Morgan v. Comm’r of*
18 *Soc. Sec. Admin.*, 169 F.3d 595, 599–600 (9th Cir.1999).

1 3. *Conservative Treatment*

2 Despite history of having been prescribed multiple medications, *see, e.g.*, Tr.
3 620-623 (prescribing Busapar, Zyprexa, and Tegretol), and having noted benefit
4 from medication, *see, e.g.*, Tr. 677, 753, the ALJ also noted that in late 2014 into
5 2015 Plaintiff was not taking psychotropic medications. Tr. 25 (citing Tr. 803,
6 806, 810). A conservative course of treatment may undermine assertions of
7 disabling symptoms. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1039-40 (9th Cir.
8 2008); *Johnson v. Shalala*, 60 F.3d 1428, 1434 (conservative treatment can suggest
9 a lower level of functional limitation, justifying adverse credibility determination).
10 It was reasonable for the ALJ to consider conservative treatment measures as a
11 reason to discount Plaintiff's testimony that her mental impairments were so severe
12 as to be completely disabling. *See Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir.
13 2007); *see also Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005) ("[W]here
14 evidence is susceptible to more than one rational interpretation, it is the
15 [Commissioner's] conclusion that must be upheld."). This was a clear and
16 convincing reason to find Plaintiff's symptom complaints less than credible.

17 4. *Gaps in Treatment*

18 Next, the ALJ found Plaintiff's symptom complaints less than credible
19 because there were "significant gaps in the claimant's history of treatment." Tr.
20 24. The medical treatment a Plaintiff seeks to relieve her symptoms is a relevant

1 factor in evaluating the intensity and persistence of symptoms. 20 C.F.R. §§
2 416.929(c)(3)(iv), (v). Unexplained, or inadequately explained, failure to seek
3 treatment or follow a prescribed course of treatment may be the basis for an
4 adverse credibility finding unless there is a showing of a good reason for the
5 failure. *See Orn v. Astrue*, 495 F.3d 625, 638 (9th Cir. 2007). Where the evidence
6 suggests lack of mental health treatment is part of a claimant's mental health
7 condition, it may be inappropriate to consider a claimant's lack of mental health
8 treatment as evidence of a lack of credibility. *See Nguyen v. Chater*, 100 F.3d
9 1462, 1465 (9th Cir. 1996). However, when there is no evidence suggesting a
10 failure to seek treatment is attributable to a mental impairment rather than personal
11 preference, it is reasonable for the ALJ to conclude that the level or frequency of
12 treatment is inconsistent with the alleged severity of complaints. *Molina*, 674 F.3d
13 at 1113-14.

14 As the ALJ noted at the time of the initial administrative hearing, Plaintiff
15 had not been in counseling since November 2013, Tr. 49-50, and in January 2014,
16 was discharged due to failure to follow through with attending appointments.
17 Tr.25. Plaintiff later attended four sessions in the summer of 2014, but was again
18 discharged. Tr. 25. Plaintiff contends these gaps are not "significant" and started
19 after Plaintiff moved away from home and "no longer had an authority figure
20 forcing her to treat her mental illness." ECF No. 17 at 14. At the hearing, the ALJ

1 inquired at the hearing into the gaps in treatment. Plaintiff testified that “I did a lot
2 better when I was in counseling and doing the pills which is why I’m trying to get
3 back into a counseling center....” Tr. 64. She explained she did not want to seek
4 counseling at the Chas Clinic because she could only see counselors there once a
5 week, and she preferred appointments twice a week. Tr. 65. As Plaintiff’s lack of
6 consistent counseling since November 2013 appears based upon personal
7 preference and is inadequately explained, it was a relevant consideration bearing
8 on Plaintiff’s credibility. *See Orn*, 495 F.3d at 638 (9th Cir. 2007).

9 Overall, the ALJ provided specific, clear, and convincing reasons for
10 rejecting Plaintiff’s symptom claims, including pain. The ALJ made extensive
11 credibility findings and identified multiple valid reasons supported by the record
12 for discounting Plaintiff’s statements regarding her subjective symptoms.
13 Moreover, “where evidence is susceptible to more than one rational interpretation,
14 it is the [Commissioner’s] conclusion that must be upheld.” *Burch*, 400 F.3d at
15 679.

16 **C. Medical Opinion Evidence**

17 Plaintiff contends the ALJ improperly weighed the opinions of examining
18 doctor John Arnold, Ph.D., and nonexamining doctors Donna Veraldi, Ph.D., Ellen
19 Rozenfeld, Ed.M., Psy.D., Jerry Gardner, Ph.D., and John Robinson, Ph.D. ECF
20

1 No. 17 at 15-19.

2 There are three types of physicians: “(1) those who treat the claimant
3 (treating physicians); (2) those who examine but do not treat the claimant
4 (examining physicians); and (3) those who neither examine nor treat the claimant
5 [but who review the claimant’s file] (nonexamining [or reviewing] physicians).”
6 *Holohan v. Massanari*, 246 F.3d 1195, 1201–02 (9th Cir. 2001) (citations omitted).
7 Generally, a treating physician’s opinion carries more weight than an examining
8 physician’s, and an examining physician’s opinion carries more weight than a
9 reviewing physician’s. *Id.* at 1202. If a treating or examining physician’s opinion
10 is uncontradicted, the ALJ may reject it only by offering “clear and convincing
11 reasons that are supported by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d
12 1211, 1216 (9th Cir. 2005). “If a treating or examining doctor’s opinion is
13 contradicted by another doctor’s opinion, an ALJ may only reject it by providing
14 specific and legitimate reasons that are supported by substantial evidence.”
15 *Bayliss*, 427 F.3d at 1216 (citing *Lester*, 81 F.3d at 830–31).

16 *1. John Arnold, Ph.D.*

17 Dr. Arnold prepared a psychological/psychiatric evaluation on November
18 20, 2014. Tr. 772-76. Dr. Arnold opined that Plaintiff was markedly limited in the
19 ability to: (1) perform activities within a schedule, maintain regular attendance, and
20 be punctual within customary tolerances without special supervision; (2) adapt to

1 changes in a routine work setting; (3) communicate and perform effectively in a
2 work setting; and (4) complete a normal work day and work week without
3 interruptions from psychologically based symptoms. Tr. 774. He found a number
4 of other moderate limitations. *Id.* “Marked” was defined on the form as “a very
5 significant limitation on the ability to perform one or more basic work activity.”
6 *Id.*

7 The ALJ accorded Dr. Arnold’s opinion little weight. Tr. 26. As Dr.
8 Arnold’s opinion was contradicted by the opinions of Drs. Veraldi, Rozenfeld,
9 Gardner, and Robinson, the ALJ was required to provide specific and legitimate
10 reasons for rejecting the opinion. *Bayliss*, 427 F.3d at 1216.

11 a. Internal inconsistency

12 The ALJ discounted Dr. Arnold’s opinion because it was internally
13 inconsistent. An ALJ may reject opinions that are internally inconsistent. *Nguyen*,
14 100 F.3d at 1464. An ALJ is not obliged to credit medical opinions that are
15 unsupported by the medical source’s own data and/or contradicted by the opinions
16 of other examining medical sources. *Tommasetti*, 533 F.3d at 1041. Here, the ALJ
17 found that the assessed marked limitations were inconsistent with Dr. Arnold’s
18 clinical finding set forth on the same form of “mild” depression and anxiety,
19 “which she stated were improving.” Tr. 26. Plaintiff does not address the
20 inconsistency and instead disputes the characterization of the impairments as

1 “mild,” which was Dr. Arnold’s finding, not the ALJ’s characterization. ECF No.
2 17 at 16-17; Tr. 773. The Court concludes the internal inconsistency in Dr.
3 Arnold’s assessment was a specific and legitimate reason to discount the opinion.

4 b. Inconsistency with the medical record as a whole

5 Additionally, the ALJ concluded Dr. Arnold’s opinion was inconsistent with
6 “treatment notes that generally show the claimant fully alert and oriented with no
7 deficits in attention, concentration, or memory.” Tr. 26. Relevant factors to
8 evaluating any medical opinion include the amount of relevant evidence that
9 supports the opinion, the quality of the explanation provided in the opinion, and the
10 consistency of the medical opinion with the record as a whole. *Lingenfelter v.*
11 *Astrue*, 504 F.3d 1028, 1042 (9th Cir. 2007); *Orn*, 495 F.3d at 631. An ALJ may
12 discredit medical opinions that are conclusory, brief, and unsupported by the
13 record as a whole. *Batson v. Comm’r Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th
14 Cir. 2004). The ALJ described a number of treatment records in detail in the
15 discussion of the “paragraph B” criteria and the RFC. Tr. 22 (citing Tr. 714-15,
16 753, 767, 876); Tr. 24-25. Among a number of treatment notes the ALJ set forth,
17 one was from June 2013, which stated “symptoms have stabilized,” “patient
18 reports it is not difficult at all to meet home, work, or social obligations,” and
19 “patient is not anxious, has normal attention span and concentration, does not have
20 pressured speech and does not have suicidal ideation.” Tr. 618-19; Tr. 24. The

1 ALJ also discussed the October 2013 mental status examination note, which
2 indicated Plaintiff had a normal thought process, good fund of knowledge, and
3 normal memory, and it was recommended to “simplify medications” as “necessity
4 for all of these medications in unclear.” Tr. 716; Tr. 22, 25.

5 Plaintiff contends “Ms. Hill’s treatment records do not give this impression.”
6 ECF No. 17 at 17. Plaintiff contends the record evidence of behavior in
7 uncontrolled settings, including educational records, low GAF scores, and
8 statements of Plaintiff’s family give numerous examples of Plaintiff’s difficulty in
9 concentration, focus, taking direction, and completing tasks. ECF No. 17 at 17-18.

10 While Plaintiff disagrees with the ALJ’s consideration of the evidence, if more
11 than one interpretation of the evidence is plausible, the Court must defer to that
12 interpretation. The record reflects the ALJ did take into consideration Plaintiff’s
13 attention and concentration problems, according great weight to Dr. Veraldi who
14 opined Plaintiff would be limited to simple, routine, and repetitive tasks taking into
15 consideration the records cited by Plaintiff. Tr. 87. Though the record supports
16 the fact Plaintiff struggled both at home and in the public school system prior to
17 her graduation, it also reflects Plaintiff’s success while attending school in the
18 eighth grade at the Tamarack Center for nine months. While there, in the “very-
19 structured, self-contained classroom” with a low student to teacher ratio, Plaintiff
20 did “awesome,” was “cooperative, respectful, and has a good attitude,” and was

1 “able to work to her ability level and complete assignments regularly.” Tr. 290.
2 Plaintiff’s argument does not warrant a reversal or remand of the ALJ’s decision
3 because it amounts to no more than a dispute about the ALJ’s interpretation of the
4 evidence, and “[w]here evidence is susceptible to more than one rational
5 interpretation, it is the ALJ’s conclusion that must be upheld.” *Burch v. Barnhart*,
6 400 F.3d 676, 679 (9th Cir. 2005).

7 *2. Nonexamining Opinions*

8 Plaintiff generally contends that the ALJ erred in weighing the opinions of
9 non-examining physicians Donna Veraldi, Ph.D., Ellen Rozenfeld, Ed.M., Psy.D.,
10 Jerry Gardner, Ph.D. and John Robinson, Ph.D. ECF No. 17 at 18 (including
11 contention as part of discussion of Dr. Arnold). Drs. Rozenfeld and Veraldi
12 testified as the designated psychological experts at the administrative hearings.
13 Drs. Gardner and Robinson were state agency reviewing physicians. All four
14 consistently opined Plaintiff was capable of simple, routine, tasks with limited
15 interaction with the public. Tr. 22-23.

16 Plaintiff contends crediting these opinions was error because “[t]he ALJ fails
17 to point out what part of the record was viewed that made the reviewing doctors’
18 opinions more valuable,” and because “[t]here is no basis for the doctors’ opinions
19 that [Plaintiff] could carry out routine tasks and tolerate brief contact with the
20 public and coworkers on a sustained basis.” ECF No. 17 at 18. While Plaintiff

1 may not agree with the ALJ's interpretation, it is sufficient that the ALJ's
2 interpretation is rational and supported by substantial evidence. The overall
3 longitudinal record paints a picture of a young individual whose anxiety and
4 depression were exacerbated by significant situational stressors in her home life
5 starting at an early age; she received benefit from treatment through medication
6 and counseling to help cope with and reduce situational stressors; and during the
7 relevant period demonstrated only moderate effects on concentration, thought
8 processes, and affect. Substantial evidence therefore supports the ALJ's
9 incorporation of the non-examining physicians' limitation to simple, routine,
10 repetitive tasks with limited contact with the public and coworkers.

11 **D. Lay Testimony**

12 Plaintiff contends the ALJ did not properly consider the testimony of
13 Plaintiff's mother, Elizabeth Hill. ECF No. 17 at 15.

14 An ALJ must consider the testimony of lay witnesses in determining
15 whether a claimant is disabled. *Stout v. Comm'r of Soc. Sec. Admin.*, 454 F.3d
16 1050, 1053 (9th Cir. 2006). Lay witness testimony regarding a claimant's
17 symptoms or how an impairment affects ability to work is competent evidence and
18 must be considered by the ALJ. If lay testimony is rejected, the ALJ must provide
19 reasons that are germane to each witness. *Nguyen*, 100 F.3d at 1467.

1 The ALJ considered the Third Party Function Report and testimony of
2 Plaintiff's mother that described Plaintiff as nervous, irritable, angry, anxious,
3 worried around more than two or three people, and experiencing crying spells. Tr.
4 101. The ALJ determined that:

5 The undersigned gives little weight to Ms. Hill's statements, due to their
6 inconsistency with the objective medical evidence and medical opinions of
7 record. Additionally, this testimony that the claimant is unable to work is
8 internally inconsistent with her sending the claimant out to look for work.
9 Furthermore, Ms. Hill does not have the medical training necessary to make
10 exacting observations as to dates, frequencies, types, and degrees of medical
11 signs and symptoms or the frequency or intensity of unusual moods or
12 mannerisms. More importantly, by virtue of her relationship with the
13 claimant the undersigned cannot consider Ms. Hill to be a disinterested third
14 party witness whose statements would not tend to be colored by affection for
15 the claimant and a natural tendency to agree with the symptoms and
16 limitations the claimant alleges.

17 Tr. 26-27.

18 Here, the ALJ erred in discounting Ms. Hill's statements in part because of
19 her relationship to Plaintiff. *Smolen*, 80 F.3d at 1289. However the error is
20 harmless because the ALJ gave other "germane" reasons sufficient for discounting
Ms. Hill's opinion including the objective evidence and Plaintiff's activities in
searching for work. *See Valentine v. Comm'r Soc. Sec. Admin.*, 574 F.3d 685, 694
(9th Cir. 2009) (ALJ's improper rejection of lay testimony of witness because she
was an interested party who never saw claimant at work was harmless error
because there were other germane reasons for rejecting her testimony); *see also*
Bayliss v. Barnhart, 427 F.3d 1211, 1218 (9th Cir. 2005) (noting that inconsistency

1 with medical evidence is a germane reason for discounting lay witness testimony);
2 *Carmickle v. Comm’r of Soc. Sec. Admin.*, 533 F.3d 1155, 1163–64 (9th Cir.2008)
3 (ALJ’s specific findings related to Plaintiff’s ability to perform vocational
4 functions to find testimony incredible demonstrates the ALJ did not do so
5 arbitrarily).

6 **E. Remaining Contentions**

7 Plaintiff also challenges the ALJ’s determinations of step three, the RFC,
8 and step five. However, Plaintiff’s arguments are based entirely on the assumption
9 that the ALJ erred in considering the medical evidence, Plaintiff’s symptom
10 claims, and the lay witness testimony. As discussed in detail above, the ALJ’s
11 evaluation of medical evidence and the ALJ’s adverse credibility findings, were
12 legally sufficient and supported by substantial evidence. Thus, the ALJ did not err
13 in assessing step three, the RFC, or step five.

14 **CONCLUSION**

15 After review, the Court finds that the ALJ’s decision is supported by
16 substantial evidence and free of harmful legal error.

17 **IT IS ORDERED:**

18 1. Plaintiff’s Motion for Summary Judgment (ECF No. 17) is **DENIED**.

19 2. Defendant’s Motion for Summary Judgment (ECF No. 18) is

20 **GRANTED.**

1 The District Court Executive is directed to file this Order, enter **JUDGMENT**
2 **FOR THE DEFENDANT**, provide copies to counsel, and **CLOSE THE FILE**.

3 DATED March 19, 2018.

4 s/Mary K. Dimke
5 MARY K. DIMKE
6 UNITED STATES MAGISTRATE JUDGE
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